

**CALENDAR ITEM
C53**

A	Statewide	08/09/16 W 9777.291 W 9777.234 C. Brown P. Huber
S	Statewide	C. Beckwith

**CONSIDER ADOPTION OF REGULATIONS TO IMPLEMENT AN ENFORCEMENT
AND HEARING PROCESS FOR THE MARINE INVASIVE SPECIES PROGRAM**

PROPOSAL:

Commission staff proposes to add article 4.9 to title 2, division 3, chapter 1 of the California Code of Regulations. The new article will add sections 2299.01, 2299.02, 2299.03, 2299.04, 2299.05, 2299.06, 2299.07, 2299.08, and 2299.09. Collectively, the proposed regulations establish an administrative enforcement process for violations of the Marine Invasive Species Act (Pub. Resources Code, § 71200 et seq.). Article 4.9 also establishes policies and procedures that the Commission's Executive Officer shall undertake in assessing administrative civil penalties under Public Resources Code section 71216.

BACKGROUND:

Public Resources Code section 71201, subdivision (d), declares that the purpose of the Marine Invasive Species Act is to "move the state expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state or into waters that may impact the waters of the state..." Nonindigenous species are organisms that have been transported by human means to locations where they do not naturally or historically occur. Once established, nonindigenous species can have adverse economic, ecological, and public health consequences. The Marine Invasive Species Act (Pub. Resources Code, § 71200 et seq.) reduces nonindigenous species introductions from ships by requiring ballast water and biofouling management for vessels of 300 gross registered tons or more arriving at California ports.

To implement the mandates of the Marine Invasive Species Act, Public Resources Code section 71201.7 provides authority for the Commission to adopt regulations. To that end, the Commission has adopted articles 4.5, 4.6, 4.7, and 4.8 (Cal. Code Regs., tit. 2). These regulations represent a comprehensive set of requirements, both operational (ballast water and biofouling management) and

CALENDAR ITEM NO. **C53** (CONT'D)

administrative (reporting and recordkeeping), to help prevent the vessel-borne introduction of nonindigenous species into the waters of the state.

To ensure compliance with the Marine Invasive Species Act and associated regulations, Public Resources Code section 71206 mandates that the Commission inspect at least 25 percent of arriving vessels subject to the Marine Invasive Species Act. During vessel inspections, Commission staff interviews members of the vessel crew, reviews required vessel paperwork, and takes ballast water samples. In addition to the mandated onboard vessel inspections, Commission staff performs quarterly compliance assessments on all submitted Ballast Water Management Reports. Vessels found to be noncompliant with any of the requirements of the Marine Invasive Species Act are issued a Notice of Violation.

For vessels determined to be noncompliant with any of the provisions of the Marine Invasive Species Act or associated regulations, Public Resources Code section 71216 authorizes the Commission to assess administrative civil penalties. However, there are currently no regulations defining the process by which these penalties are assessed. Adoption of article 4.9 is therefore necessary to codify the process and procedures to assess administrative civil penalties.

Compliance rates for the Marine Invasive Species Act are high, with 98 percent of the ballast water carried into California's waters from 2013-2015 managed in compliance with the law, either by retaining all ballast water on board the vessel or properly managing ballast water prior to discharge. Although compliance rates by the regulated community are high, every noncompliant discharge, or any other act of noncompliance with the Marine Invasive Species Act and associated regulations (e.g., biofouling management), poses a risk of nonindigenous species introduction to the waters of the state. Therefore, a transparent process for assessing penalties will maximize the tools available to protect state waters from the impacts of nonindigenous species. The proposed regulations are necessary to minimize the transfer of nonindigenous species from vessels into state waters.

SUMMARY OF THE PROPOSED REGULATIONS:

The proposed regulations interpret, make specific, and clarify Public Resources Code section 71216. A complete copy of the regulations as currently proposed are included as Exhibit A to this calendar item.

CALENDAR ITEM NO. **C53** (CONT'D)

In summary, the proposed regulations will serve the following functions:

1. *Classify the specific violations of the Marine Invasive Species Act and associated regulations for which administrative penalties may be assessed.* The regulations define all the potential violations of the Marine Invasive Species Act and rank them into three classes, based on the magnitude of risk of introduction of nonindigenous species.
 - Class 1 violations refer to the management of discharged ballast water as identified in Public Resources Code section 71204.3 or California Code of Regulations, title 2, section 2284. The violations pertaining to ballast water management are further divided into categories based on the distance from land the noncompliant ballast water management occurred, or whether it occurred at all. The purpose for classifying violations based on distance from land reflects the increased risk of nonindigenous species introduction when vessels discharge ballast water close to shore without proper management.
 - Class 2 violations apply to recordkeeping requirements established by Public Resources Code sections 71204 and 71205.
 - Class 3 violations pertain to the submission, to the Commission, of the required forms as identified in Public Resources Code section 71205 and California Code of Regulations, title 2, sections 2297.1 and 2298.
2. *Establish the appropriate administrative penalty for each violation based on the relative risk each violation has of introducing nonindigenous species into state waters.* Describing the potential penalty amounts for each class of violation provides transparency to the regulated community and cited parties regarding the potential liability that may attach to each violation. Public Resources Code section 71216 allows the Commission to levy administrative, civil penalties in an amount that shall not exceed \$27,500 per violation per day. The proposed regulations describe the penalties associated with each class of violation, with potential penalty amounts ranging from \$1,000 to \$27,500 depending on the class of the violation.
3. *Clearly describe the steps the Commission and its Executive Officer may take once a violation has been determined to have occurred.* The proposed regulations define the steps the Commission and its Executive

CALENDAR ITEM NO. **C53** (CONT'D)

Officer may take prior to or during any enforcement actions pursued in accordance with the Administrative Procedure Act, located in the Government Code section 11340 et seq.

4. *Describe the steps the cited party may take once a violation has been determined to have occurred.* The proposed regulations define the steps the cited party may take to remedy or respond to the violation prior to or during any enforcement actions being pursued pursuant to the Administrative Procedure Act.
5. *Provide a transparent process for the assessment of violations and administrative penalties.* The proposed regulations define the potential violations and penalty amounts for violations of the Marine Invasive Species Act. Describing the potential penalty amounts for each class of violation provides transparency to the regulated community and cited parties regarding the potential liability that may attach to each violation.
6. *Provide transparency on the rights of the cited party once a complaint has been filed.* The proposed regulations detail the rights and procedures a cited party has when issued a Notice of Violation, which is necessary to ensure a transparent enforcement process for the cited party.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code section 71216

Public Trust and State's Best Interests Analysis:

The proposed regulations will further the interests of the Public Trust by providing greater protection to Public Trust resources. Currently, the introduction of nonindigenous species to California's waters threatens Public Trust uses including ecosystem preservation, fishing, swimming, and commerce. These proposed enforcement regulations will reinforce existing substantive regulations and further deter introduction of nonindigenous species, thereby protecting Public Trust resources. Additionally, these proposed regulations will not affect navigation because substantive ballast water and biofouling regulations are already in effect. Existing law already requires the regulated community to comply with ballast water and biofouling regulations; these proposed regulations will enable assessment of penalties for noncompliance. Thus, staff believes

CALENDAR ITEM NO. **C53** (CONT'D)

that adoption of the proposed regulations would further enhance and protect Public Trust uses and resources and be in the State's best interests.

Summary of Notification and Rulemaking Process:

The proposed regulations were published in the California Regulatory Notice Register (Register 2016, No. 21-Z) on May 20, 2016. A link to all rulemaking documents was posted on the home page of the Commission's website. A Notice of Proposed Rulemaking was mailed to all 202 physical addresses in the Marine Invasive Species Program's mailing list and distributed electronically to all 204 email addresses in the same list.

The Commission held an informal comment period from January 29, 2015, through February 23, 2015. The comments received from that informal comment period were considered by Commission staff in drafting the express language within this proposed rulemaking. In addition, the proposed rulemaking was discussed during presentations made at several meetings with members of the regulated community, including:

- Annual Meeting of the Pacific Ballast Water Group, April 2015 and March 2016
- Ballast Water Management Summit, February 2016
- Marine Environmental Protection Division's Customer Service Meetings, November 2014, August 2015, and November 2015

The initial Public Comment Period for the proposed regulations spanned 46 days, from May 20, 2016, through July 5, 2016. Because the adoption of this regulation was not deemed to be controversial, a public hearing was not scheduled, nor was one requested by a member of the public. Commission staff received one comment letter during the Public Comment Period. The commenter identified four potential typographical errors or inconsistencies within the regulatory text. In response to this comment, Commission staff made a few non-substantive, but sufficiently-related, changes to four subdivisions of the proposed regulations. Because the changes were non-substantive, an additional public comment period is not necessary.

The proposed regulations are intended to become effective January 1, 2017.

CALENDAR ITEM NO. **C53** (CONT'D)

OTHER PERTINENT INFORMATION:

1. The proposed regulations interpret, implement, and make specific the provisions of Public Resources Code section 71216. This statute provides the Commission an administrative forum to impose penalties for violations of the Marine Invasive Species Act.
2. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 8, Actions by Regulatory Agencies for Protection of the Environment; California Code of Regulations, title 14, section 15308.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

3. This action is consistent with Strategic Goal 1, Key Action 1.1.2 of the Commission's Strategic Plan, which calls for staff to review existing safety standards and regulations for continued relevance, and use the public rulemaking processes to amend or adopt new regulations to enforce lease compliance and promote environmental protection and public health and safety, while reducing unnecessary bureaucracy.
4. No alternatives would be more effective in carrying out the purposes for which the regulations are proposed, or would be as effective as and less burdensome, or would more greatly lessen any adverse economic impact on small businesses or affected private persons, than the proposed regulations.
5. The proposed regulatory amendments are not considered a "major regulation" as defined by California Department of Finance in California Code of Regulations, title 1, section 2000, subdivision (g).

EXHIBIT:

- A. Text of the proposed regulations

CALENDAR ITEM NO. **C53** (CONT'D)

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 8, Actions by Regulatory Agencies for Protection of the Environment; California Code of Regulations, title 14, section 15308.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that adoption of the proposed regulations, or regulations substantially in the same form, will not substantially interfere with the public rights to navigation or the Public Trust needs and values at this time, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

AUTHORIZATION:

1. Find that no alternatives would be more effective in carrying out the purposes for which the regulations are proposed, or would be as effective as and less burdensome, or would more greatly lessen any adverse economic impact on small businesses or affected private persons, than the proposed regulations.
2. Adopt the proposed article 4.9 of chapter 1 of division 3 of title 2 of the California Code of Regulations, including sections 2299.01, 2299.02, 2299.03, 2299.04, 2299.05, 2299.06, 2299.07, 2299.08, and 2299.09, substantially in the form of that set forth in Exhibit A.
3. Authorize Commission staff to make modifications to the proposed regulations in response to recommendations by the Office of Administrative Law.
4. Authorize Commission staff to take whatever action is necessary and appropriate to comply with provisions of the Government Code regarding the lawful adoption and publication of the regulations and to ensure that the regulations become effective.
5. Authorize Commission staff to take whatever action is necessary and appropriate to implement the regulations at such time as they become effective.

EXHIBIT A

The California State Lands Commission proposes to adopt Article 4.9 of Chapter 1, Division 3 of Title 2 of the California Code of Regulations, to read as follows:

Section 2299.01 Purpose and Applicability

- (a) The purpose of the regulations in Title 2, Division 3, Chapter 1, Article 4.9 of the California Code of Regulations is to establish policies and procedures the Executive Officer of the California State Lands Commission shall undertake in assessing and commencing administrative enforcement actions pursuant to California Public Resources Code section 71216.
- (b) This article shall govern the enforcement and procedures related to violations of any of the provisions of Division 36 of the Public Resources Code and Title 2, Division 3, Chapter 1, Articles 4.5, 4.6, 4.7, and 4.8 of the California Code of Regulations.
- (c) The provisions of this article apply to all vessels, United States and foreign, carrying, or capable of carrying, ballast water into the coastal waters of the state after operating outside of the coastal waters of the state as well those vessels operating exclusively within the pacific coast region, except those vessels described in section 71202 of the Public Resources Code.

Authority Cited: Sections 71201 and 71201.7, Public Resources Code.

Reference Cited: Section 71201, Public Resources Code.

Section 2299.02 Definitions

- (a) "CCR" means the California Code of Regulations.
- (b) "Cited Party" means the master, owner, operator, agent, or person in charge of a vessel that has violated a provision or provisions of the California Marine Invasive Species Act (codified as Cal. Pub. Resources Code § 71200 et seq.) or title 2, California Code of Regulations, Articles 4.5, 4.6, 4.7, and 4.8.
- (c) "Coastal waters" means estuarine and ocean waters within 200 nautical miles of land or less than 2,000 meters (6,560 feet, 1,093 fathoms) deep and rivers, lakes, or other water bodies navigably connected to the ocean.
- (d) "Commission" means the California State Lands Commission.

EXHIBIT A

- (e) “Exchange” means to replace the water in a ballast tank using, and strictly complying with, either of the methods described in Division 36, Chapter 1, of the California Public Resources Code section 71200, subdivision (h).
- (f) "Executive Officer" means the Executive Officer of the California State Lands Commission or any person designated by the Executive Officer to act on behalf of the Executive Officer.
- (g) “Incorrect exchange” means an exchange that is not performed in full compliance with either of the methods described in Division 36, Chapter 1 of the California Public Resources Code section 71200, subdivision (h).
- (h) “Land” means the material of the earth, whether soil, rock, or other substances that sit landward of, or at an elevation higher than the ocean’s mean high-tide line. Land includes rock outcroppings or islands located offshore.
- (i) “PRC” means Public Resources Code.

Authority Cited: Sections 71201 and 71201.7, Public Resources Code.

Reference Cited: Section 71200 and 71216, Public Resources Code.

Section 2299.03 Classification of Violations

A violation of any provision within Division 36, Chapter 2 (comprising sections 71203 through 71207), of the PRC or Title 2, Division 3, Chapter 1, Articles 4.6, 4.7, and 4.8 of the CCR shall be considered within one of three classes:

- (a) Class 1: Class 1 violations shall be issued to a cited party when a vessel discharges ballast water in the coastal waters of the state without first complying with the appropriate ballast management practices identified in section 71204.3 of the PRC or 2 CCR section 2284.
 - (1) Class 1 violations will be considered to be:
 - (A) Minor:
 - (1) if a vessel subject to section 71204.3, subdivision (c) of the PRC, prior to discharging ballast water into the coastal waters of the state, performs an incorrect exchange of

EXHIBIT A

ballast water in an area less than 200 nautical miles and equal to or greater than 180 nautical miles from land; or

- (2) if a vessel subject to 2 CCR section 2284, prior to discharging ballast water into the coastal waters of the state, performs an incorrect exchange of ballast water in an area less than 50 nautical miles and equal to or greater than 45 nautical miles from land.

(B) Moderate:

- (1) if a vessel subject to section 71204.3, subdivision (c) of the PRC, prior to discharging ballast water into the coastal waters of the state, performs an incorrect exchange of ballast water in an area less than 180 nautical miles and equal to or greater than 100 nautical miles from land;
- (2) if a vessel subject to 2 CCR section 2284, prior to discharging ballast water into the coastal waters of the state, performs an incorrect exchange of ballast water in an area less than 45 nautical miles and equal to or greater than 25 nautical miles from land; or
- (3) any additional Class 1 Minor violations committed on a subsequent voyage committed within twelve (12) months of a preceding Class 1 Minor violation shall be considered a Class 1 Moderate violation.

(C) Major (I):

- (1) if a vessel subject to section 71204.3, subdivision (c) of the PRC, prior to discharging ballast water into the coastal waters of the state, performs an incorrect exchange of ballast water in an area less than 100 nautical miles from land;
- (2) if a vessel subject to 2 CCR section 2284, prior to discharging ballast water into the coastal waters of the state, performs an incorrect exchange of ballast water in an area less than 25 nautical miles from land; or

EXHIBIT A

- (3) any additional Class 1 Moderate violations committed on a subsequent voyage committed within twelve (12) months of a preceding Class 1 Moderate violation shall be considered a Class 1 Major (I) violation.
 - (D) Major (II): if a vessel, subject to section 71204.3, subdivision (c) of the PRC or 2 CCR section 2284, prior to discharging ballast water into the coastal waters of the state, fails to perform any ballast water exchange during its voyage.
- (b) Class 2: Class 2 violations shall be issued to a cited party when a vessel fails to properly maintain on board the vessel, as required:
 - (1) a ballast water management plan pursuant to section 71204, subdivisions (h) and (i) of the PRC;
 - (2) a ballast water log pursuant to section 71205, subdivision (d) of the PRC;
or
 - (3) any other information that is required to be carried or maintained on board a vessel pursuant to section 71205 of the PRC.
- (c) Class 3: Class 3 violations shall be issued when a cited party fails to submit the following information to the Commission, as required:
 - (1) the ballast water reporting information required by section 71205, subdivision (c) of the PRC;
 - (2) the "Ballast Water Treatment Supplemental Reporting Form" as required by 2 CCR section 2297.1, subdivision (b);
 - (3) the "Hull Husbandry Reporting Form" as required by 2 CCR section 2298;
 - (4) the "Ballast Water Treatment Technology Annual Reporting Form" as required by 2 CCR section 2297.1, subdivision (a); or
 - (5) any other forms required pursuant to section 71205 of the PRC.

EXHIBIT A

Authority Cited: Sections 71203, 71204, 71204.3, 71205, 71206 and 71201.7, Public Resources Code.

Reference Cited: Sections 71207 and 71216, Public Resources Code.

Section 2299.04 Penalties

The cited party shall be assessed a penalty for each violation issued pursuant to this article. The penalty structure for each class of violation, as described in section 2299.03 of this Division, shall be as follows:

(a) Class 1 violations

- (1) Class 1 violations are subject to penalties in the amount listed in the following table:

<u>Minor</u>	<u>Not to exceed \$5,000 per violation</u>
<u>Moderate</u>	<u>Not to exceed \$10,000 per violation</u>
<u>Major (I)</u>	<u>Not to exceed \$20,000 per violation</u>
<u>Major (II)</u>	<u>Not to exceed \$27,500 per violation</u>

- (2) Every ballast tank involved in a ballast discharge violating this Division shall be deemed a separate Class 1 violation.

(b) Class 2 violations

- (1) Upon the first occurrence of a Class 2 violation by a vessel, in lieu of a penalty, a letter of noncompliance shall be sent to the cited party explaining the violation.
- (2) Subsequent occurrences by a vessel of the same type of Class 2 violation shall be subject to a penalty of \$10,000 per violation.

(c) Class 3 violations

- (1) Upon the first occurrence of a Class 3 violation, in lieu of a penalty, a letter of noncompliance shall be sent to the cited party explaining the violation.
- (2) Subsequent occurrences of the same type of Class 3 violation shall be assessed a penalty of \$1,000 per violation. Every thirty (30) day period

EXHIBIT A

that a required form or forms remains unsubmitted after the original period for submission identified in section 2299.03(c) of this Division shall be deemed a separate violation.

Authority Cited: Sections 71201.7, and 71216, Public Resources Code.

Reference Cited: Sections 71207 and 71216, Public Resources Code.

Section 2299.05 Preliminary Actions

- (a) Prior to pursuing any enforcement action under the provisions of this article, the following preliminary procedures shall be followed.
 - (1) The Executive Officer shall provide a written notice of a violation to the cited party containing the following:
 - (A) a description of the violation;
 - (B) a statement that enforcement proceedings may be initiated; and
 - (C) notification that the cited party may, within ten (10) working days after receipt of the notice, submit a request in writing to the Executive Officer for a preliminary meeting.
 - (2) If the cited party requests a preliminary meeting with the Executive Officer, that meeting shall be held prior to any further enforcement actions and may include any discussions relating to the violations in question, including, but not limited to, whether a violation had in fact occurred, what evidence exists for the violation, and what classification should apply for each violation.
 - (3) If the cited party so requests and agrees to pay for all costs, the preliminary meeting shall be recorded and a transcript shall be prepared.
 - (4) The preliminary meeting shall be scheduled at the Executive Officer's discretion, but shall in no event be scheduled more than thirty (30) calendar days after the request for the meeting is received by the Executive Officer.

EXHIBIT A

- (5) Within ten (10) working days after the preliminary meeting, the Executive Officer shall provide written notice to the cited party of the decision as to whether enforcement action is to proceed.
- (b) If, after the procedures within subdivision (a) are followed, the Executive Officer finds that the cited party has committed a violation of any provision referred to in this article, the Executive Officer may take any or all of the following actions:

 - (1) initiate proceedings pursuant to section 71216 of the PRC against the cited party to administratively impose civil penalties;
 - (2) take whatever legal action is necessary and appropriate to obtain an order from the court enjoining the violation;
 - (3) notify the appropriate federal agency of any violation which may also constitute violation of federal law or regulation; or
 - (4) refer the violation to the local district attorney for prosecution pursuant to section 71217 of the PRC.
- (c) It is unnecessary for the Executive Officer to comply with the procedures of this section when issuing an order for a vessel to depart the waters of the state pursuant to section 71207, subdivision (d) of the PRC.

Authority Cited: Sections 71201.7, 71207, and 71216, Public Resources Code.

Reference Cited: Section 71207, 71216 and 71217, Public Resources Code.

Section 2299.06 Hearing Procedures

- (a) Civil penalties shall be administratively imposed for violations of the provisions of Division 36, Chapter 2 (commencing with section 71203) of the Public Resources Code and Title 2, Division 3, Chapter 1, Articles 4.6, 4.7, and 4.8 of the California Code of Regulations.
- (b) Except as otherwise specified in this article, the process to impose civil penalties shall be conducted in accordance with the Administrative Procedure Act located within Title 2, Division 3, Part 1, Chapter 5 (commencing with section 11500) of the Government Code and section 71216 of the PRC. The Executive Officer and the cited party may agree to settle the violation before, during, or after the commencement of proceedings to impose civil penalties.

EXHIBIT A

Authority Cited: Sections 71201.7 and 71216, Public Resources Code.

Reference Cited: Section 71216, Public Resources Code.

Section 2299.07 Complaint

- (a) After following the preliminary actions described in section 2299.05 of this article, the Executive Officer may commence proceedings to impose civil penalties by issuing a complaint.
- (b) The complaint must contain all of the following:
 - (1) a brief statement of the violation alleged, including the acts or failures to act that constitute a basis for liability;
 - (2) the amount of the civil liability;
 - (3) a statement that the cited party has the right to a formal hearing, upon request, at which they may be represented by counsel; and
 - (4) a statement that the cited party's right to a hearing will be deemed waived if the cited party fails to file a notice of defense with the Executive Officer within thirty (30) days from the date the complaint was served on the cited party, or their agent for service.
- (c) A copy of the complaint shall be served upon the cited party either personally or by registered mail. Complaints served by registered mail shall be deemed served as of the postmark date.

Authority Cited: Sections 71201.7 and 71216, Public Resources Code.

Reference Cited: Section 71216 Public Resources Code.

Section 2299.08 Notice of Defense

- (a) The cited party may, no later than thirty (30) days after service of the complaint, submit a notice of defense to the Executive Officer at the principal office address identified in section 1901 of this Division.
- (b) The notice of defense shall be in the form and include the content described in section 11506 of the Government Code.

EXHIBIT A

- (c) If, within the notice of defense the cited party requests a hearing on the merits, such a hearing shall commence within thirty (30) days after the Executive Officer receives the notice of defense. The Executive Officer and the cited party may stipulate to commence the hearing date later than thirty (30) days.
- (d) If the Executive Officer does not receive a notice of defense within thirty (30) days after service of the complaint, the Executive Officer shall issue an order setting liability in the amount of the complaint.
 - (1) If the Executive Officer and cited party have reached a settlement of the violation, the Executive Officer shall issue an order setting liability in the amount of the settlement.
 - (2) An order setting liability shall not be subject to review by a court or agency.

Authority Cited: Sections 71201.7 and 71216, Public Resources Code.

Reference Cited: Section 71216, Public Resources Code

Section 2299.09 Hearing

- (a) A hearing shall be conducted by an independent hearing officer in accordance with the procedures specified in Title 2, Division 3, Part 1, Chapter 5 (commencing with section 11500) of the Government Code, except as otherwise specified in this section. In making a determination, the hearing officer shall take the following into consideration:
 - (1) the nature, circumstances, extent, and gravity of the violation, taking into account the harm to the environment and ecology;
 - (2) the cited party's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety of the environment; and
 - (3) the cited party's ability to pay the proposed civil penalty.
- (b) At the Executive Officer's discretion, the venue for the hearing shall be in either Sacramento County or Los Angeles County, unless the Executive Officer and the cited party stipulate to an alternate location.

EXHIBIT A

Authority Cited: Sections 71201.7 and 71216, Public Resources Code.

Reference Cited: Section 71216, Public Resources Code.